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ADAMS EXPRESS CO. *v.* ALLENDALE FARM, Inc.

March 12, 1914.

[81 S. E. 42.]

1. Carriers (§ 218*)—Freight—Exemptions from Liability—Negligence.—An express company may stipulate, in a contract for the carriage of live stock, for exemption from liability for delay, injuries to, or loss of, the animals, unless caused by the negligence of its agents or employees.

[Ed. Note.—For other cases, see Carriers Cent. Dig. §§ 674-696, 927, 928, 933-949; Dec. Dig. § 218.* 2 Va.-W. Va. Enc. Dig. 685; 15 Va.-W. Va. Enc. Dig. 190; 15 Va.-W. Va. Enc. Dig. 56.]

2. Carriers (§ 228*)—Injuries to Live Stock—Proof of Negligence.—The mere fact that a cow shipped by express was found to be sick after being unloaded at an intermediate point in apparently good condition, was not such proof of injury to the cow as to shift the burden upon the express company of proving its freedom from fault under Code 1904, § 1294—1, making the fact of damage or loss prima facie evidence of negligence by the carrier, even if the statute is applicable to an interstate shipment.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 957-960; Dec. Dig. § 228.* 2 Va.-W. Va. Enc. Dig. 717; 14 Va.-W. Va. Enc. Dig. 201; 15 Va.-W. Va. Enc. Dig. 169.]

3. Carriers (§ 228*)—Injury to Live Stock—Nature of Damage.—One suing for damages to cattle shipped must show some injury to the animal which did not result from its inherent nature or defects, in order to require the carrier to show that the injury was not through its fault.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 957-960; Dec. Dig. § 228.* 2 Va.-W. Va. Enc. Dig. 717; 14 Va.-W. Va. Enc. Dig. 201; 15 Va.-W. Va. Enc. Dig. 169.]

4. Appeal and Error (§ 999*)—Conclusiveness of Verdict.—The rule that the existence of negligence cannot be left entirely to conjecture does not conflict with the rule that a verdict should not be disturbed where reasonable men may fairly differ on the question of negligence.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3912-3921, 3923, 3924; Dec. Dig. § 999.* 1 Va.-W. Va. Enc. Dig. 605; 14 Va.-W. Va. Enc. Dig. 98; 15 Va.-W. Va. Enc. Dig. 71.]

5. Carriers (§ 228*)—Injuries to Live Stock—Sufficiently of Evidence—Existence of Injury.—Evidence, in an action for injuries to live stock en route, held not to show, as against a demurrer thereto,

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

any injury in transit to which the alleged paralysis of the animal could be reasonably attributed.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 957-960; Dec. Dig. § 228.* 2 Va.-W. Va. Enc. Dig. 717; 14 Va.-W. Va. Enc. Dig. 201.]

Error to Corporation Court of Fredericksburg.

Action by the Allendale Farm, Incorporated, against the Adams Express Company. Judgment for plaintiff, and defendant brings error. Reversed and remanded for new trial.

A. T. Embrey, of Fredericksburg, and *W. R. Meredith*, of Richmond, for plaintiff in error.

Wm. W. Butzner, of Fredericksburg, for defendant in error.

COMMONWEALTH et al v. SCHMELZ.

March 12, 1914.

[81 S. E. 45.]

1. Taxation (§ 552½*)—Compromise of Taxes—Authority of Auditor.—Code 1904, §§ 702, 702a, relating to the authority of the auditor to make adjustment of old and disputed claims on approval of the Attorney General and indorsed as approved by the judge of the circuit court of the city of Richmond, has no application to a compromise and settlement of a suit for taxes in a court of competent jurisdiction.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. § 1067; Dec. Dig. § 552½.* 13 Va.-W. Va. Enc. Dig. 114.]

2. Taxation (§ 552½*)—Compromise of Taxes—Authority of Auditor.—Where an auditor, acting for the commonwealth, agrees, with the consent of the Attorney General, to accept the sum awarded by the circuit court in settlement and discharge of all claims for taxes against a certain party, the agreement is binding on the commonwealth.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. § 1067; Dec. Dig. § 552½.* 13 Va.-W. Va. Enc. Dig. 114.]

3. Taxation (§ 552½*)—Compromise and Settlement—Persons Bound.—Where, in a proceeding to be relieved from an erroneous assessment of taxes, the state, county, and city claimed judgment for omitted taxes, an agreement by the auditor, acting for the commonwealth, to abide by the judgment of the circuit court, while binding on the commonwealth, has no binding force on the county and city.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. § 1067; Dec. Dig. § 552½.* 13 Va.-W. Va. Enc. Dig. 114.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.